

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

SEIU LOCAL 200 UNITED

Employer

and

Case 3-RC-11604

**LOCAL 1104, COMMUNICATIONS
WORKERS OF AMERICA**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that SEIU Local 200 United, hereinafter referred to as the Employer, is an unincorporated association with its office and principal place of business located in Syracuse, New York, and other offices located in the State of New York, where it is engaged in collective-bargaining representation of private and public sector employees. During the past twelve months, the Employer, in conducting its business operations, has derived gross revenues in excess of \$500,000, and during the same period of time, has purchased and received goods

and services valued in excess of \$50,000, directly from points located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Local 1104, Communications Workers of America, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

At the hearing, the Petitioner amended its petition to include all full-time and regular part-time field personnel, including union representatives, organizers, project specialists and campaign coordinators employed by the Employer at its offices located in the State of New York; excluding political organizers, political representatives, information coordinators, office clerical employees, and all managerial employees, professional employees, guards and supervisors as defined in the Act.

At the hearing, the parties stipulated that union representatives, organizers, project specialists and campaign coordinators should be included in any bargaining unit found appropriate herein. Based on the parties' stipulation, I shall include these job classifications in the bargaining unit found appropriate herein.

At the hearing, the parties also stipulated that the following job classifications should be excluded from the bargaining unit, because they are classifications filled by supervisors

exercising one or more of the criteria listed in Section 2(11) of the Act: president, executive vice-president, vice-president, and secretary-treasurer. Based on the parties' stipulation, and the record as a whole, I shall exclude these job classifications from the bargaining unit found appropriate herein.

There are two issues presented herein: unit composition and supervisory status. The first at issue is whether the job classifications of political organizer, political representative and information coordinator should be excluded from the bargaining unit, as urged by the Petitioner. The Petitioner takes the position that these job classifications should be excluded from the bargaining unit because they do not share a community of interest with the employees in the petitioned-for unit. The Employer argues that these job classifications should be included in the bargaining unit, because they share a sufficient community of interest with other employees in the unit.

The second issue in dispute involves the supervisory status of three individuals. One, Joseph Rossi serves as political representative, a disputed classification. The other two, Christopher Roell and Richard Drucker serve in the undisputed classifications of union representatives. The Petitioner seeks to exclude them as supervisors. The Employer argues that these three individuals should be included in the bargaining unit because they are not supervisors as they do not have the authority to exercise one or more of the criteria listed in Section 2(11) of the Act.

Based on the evidence adduced during the hearing and the relevant case law,¹ I conclude that political organizers, political representatives and information coordinators, should be included in the appropriate bargaining unit found herein, as they share a community of interest

¹ At the hearing, both parties waived their right to file post-hearing briefs.

with other employees in the bargaining unit. I also conclude that Joseph Rossi, Christopher Roell, and Richard Drucker should be included in the appropriate bargaining unit found herein, as the Petitioner failed to meet its burden of establishing that these three individuals are supervisors as defined in Section 2(11) of the Act.

FACTS

As noted above, the Employer is engaged in the collective-bargaining representation of private and public sector employees. The Employer has six offices in New York State, which are located in Syracuse, Buffalo, Rochester, Albany, Binghamton and Hudson Valley. The record establishes that the Employer employs approximately 19 employees in the classifications that the parties are seeking to include in the bargaining unit. The Employer's principal office is located in Syracuse where 10 of the 19 employees are employed. The Syracuse office operates under the supervision of president Jerry Dennis; executive vice-president Liz Golembeski; secretary-treasurer Robert Connolly; and director of organizing Christopher Binaxas. The record indicates that the three employees based in Buffalo, the two employees based in Rochester, and the one employee who floats between Rochester and Buffalo, report directly to Binaxas in Syracuse. The Employer's Albany office is staffed by the remaining three employees who are under the supervision of Mike Lonigro, the Employer's vice-president and Mary Jane Whiteknight, the Employer's supervisor. Lonigro is based in the Employer's Albany office, and Whiteknight is based in the Employer's Hudson Valley office. The record further establishes that there are no petitioned-for employees in the Binghamton and Hudson Valley offices.

There are 10 union representatives employed by the Employer. Three union representatives are in Syracuse, three in Buffalo, one in Rochester, two in Albany, and one floats between the Buffalo and Rochester offices. The job duties for union representatives include

servicing and enforcing collective-bargaining agreements involving private and public sector employers, handling grievances and complaints filed by members, holding regularly scheduled membership meetings, recruiting and training stewards, and assisting campaign coordinators and organizers in developing plans for workplace campaigns. They also create and assist the information coordinator in creating communication systems such as leaflets, handbills, proposals and newsletters, and encourage members to participate in political and lobbying activities. The record establishes that union representatives earn an annual salary between \$38,000 and \$52,000. All union representatives receive a monthly car allowance between \$500.00 and \$600.00 for related travel expenses.

There is no dispute that organizers, as opposed to political organizers, are to be included in the unit. There are four organizers employed by the Employer. Two organizers are based in Syracuse, one in Rochester and one in Albany. The job duties for organizers include assisting workers in conducting organizing campaigns in their workplaces, identifying workers who are interested in forming a union, meeting with workers to discuss the benefits of unions, and training and supporting workers to become leaders in their workplaces. Binaxas, the Employer's director of organizing, testified that organizers are also responsible for assisting union representatives during contract negotiations by organizing workers to participate in rallies in support of such negotiations. The record establishes that organizers earn an annual salary between \$30,000 and \$42,000. The record further establishes that three of the four organizers receive a monthly car allowance of between \$500.00 and \$550.00, while the remaining organizer receives \$300.00 per month for related travel expenses.

The Employer employs one project specialist and one campaign coordinator. These are undisputed job classifications. Keegan Cox, who works out of the Syracuse office, is the

Employer's only project specialist. The record establishes that as a project specialist, Cox is responsible for developing community support, through rallies, for special projects such as on-going contract negotiations. Cox also has some of the same responsibilities as the organizers, including organizing new members in private and public workplaces. The record establishes that Cox earns an annual salary of \$41,333 and receives a monthly car allowance of \$500.00.

Robert Tompkins, who also works out of the Syracuse office, in an undisputed classification, is the Employer's only campaign coordinator. As campaign coordinator, Tompkins is responsible for coordinating activities relating to on-going contract negotiations, such as rallies, to bring the community, political leaders and members together for a united stance during such negotiations. Tompkins also serves as a union representative, performing the same job duties as other union representatives, such as servicing and enforcing collective-bargaining agreements and negotiating new and successor collective-bargaining agreements. Tompkins earns an annual salary of \$55,377 and receives a monthly car allowance of \$600.00.

As noted above, the Petitioner seeks to exclude the information coordinator, political organizer and political representative from the bargaining unit. Mark Keith is the Employer's only information coordinator. The record establishes that Keith works out of the Syracuse office and operates under the same supervision as other employees who work in that office. As information coordinator, Keith is responsible for assisting union representatives, organizers and the project specialist in communication development. He drafts leaflets and handbills for on-going projects and contract negotiations. Binaxas testified that Keith works directly with union representatives and organizers, when drafting leaflets and handbills. Keith is also responsible for drafting the Employer's internal newspaper, which is circulated to the Employer's entire membership consisting of approximately 11,000 members. Binaxas testified that Keith acquires

the information for the newspaper from union representatives, who provide stories, and from organizers, who provide campaign results. Keith spends approximately 10 to 15 percent of his time servicing a bargaining unit, in which he performs the same job duties as other union representatives, such as servicing and enforcing collective-bargaining agreements. Keith earns an annual salary of \$42,861 and receives a monthly car allowance of \$500.00, which is similar to wages and benefits provided to other employees in the petitioned-for unit..

The Employer employs one political organizer, John Balduzzi, and one political representative, Joseph Rossi. Balduzzi and Rossi work out of the Syracuse office and report directly to Jerry Dennis, the Employer's president. These two positions are interchangeable and Balduzzi and Rossi have identical job duties. Binaxas testified that these duties include identifying, contacting and organizing political leaders to support organizing campaigns; assisting members to sign up for the Committee on Political Education (COPE);² and assisting members with voter registration. Binaxas testified that Balduzzi and Rossi are also responsible for attending contract ratification votes and monthly membership meetings. While performing their job duties, Balduzzi and Rossi interact and work with union representatives, organizers, the project specialist and the campaign coordinator on a daily basis. For example, Hilary Penney, an organizer based out of Syracuse, testified that she interacts with Rossi on a regular basis at work. Edward Bradley, an organizer based out of Albany, testified that he uses and interacts with the political department, including Balduzzi and Rossi, whenever he needs political assistance during organizing campaigns. Finally, Robert Tompkins, a campaign coordinator based in Syracuse, also testified that he worked with Rossi to elicit political support for several projects, including contract negotiations involving Lords Hospital, Johnson's Controls and George Junior

² COPE allows a member to deduct a certain amount of money per month to go to political education for supporting the Employer's political activities.

Republic. Tompkins testified that Rossi was responsible for the political aspects of the projects, while he was responsible for the representational aspects. Rossi earns an annual salary of \$40,000 and Balduzzi earns an annual salary of \$35,000. Like other employees, Rossi and Balduzzi also receive a monthly car allowance of \$500.00.

The Employer provides all of its employees the same benefit package, which includes an annual vacation determined by length of service; 15 paid holidays; earned sick leave; jury duty; 3 personal leave days; health insurance and pension benefits.

As noted above, the Petitioner seeks to exclude Joseph Rossi, Christopher Roell and Richard Drucker, from the bargaining unit because they are alleged to be supervisors. More specifically, the Petitioner contends that Rossi is a supervisor because he has the authority to hire or effectively recommend hiring, and because he holds himself out to the public as the Employer's political director. As noted above, Rossi is a political representative, who works out of the Syracuse office. Rossi was hired by the Employer on January 3, 2005. At some point after his hire, the Employer began advertising for a job opening for a political organizer.³ Hilary Penney, an organizer based out of Syracuse, testified that she observed Rossi looking at resumés for the new job opening. Penney also testified that Rossi told her, during a conversation, that he was no longer accepting resumés for the vacant position. Edward Bradley, an organizer based out of Albany, testified that Rossi had asked him to send resumés to him for the vacant position. There is no record evidence, however, as to why Rossi was in possession of the resumés or what his responsibilities were with respect to hiring a new political organizer. In fact, Penney and Bradley both testified that they had no direct knowledge about the Employer's hiring decisions, what role Rossi played in hiring a new political organizer or whether anyone else reviewed the

³ The record does not indicate the exact date of such job advertisement.

resumés. Binaxas testified that Rossi does not have the authority to hire or effectively recommend hire.

Penny, Bradley and Tompkins testified that they have observed Rossi introduce himself as the Employer's political director. Penney testified that Rossi has business cards that state that his job title is political director. The Employer asserts that his title is political representative. Patricia Rector, a former employee, testified that she had previously served as the Employer's political director, for a year and a half before Rossi was hired, during which time she did not have the authority to hire, direct employees' work or supervise any other employees.⁴ Regardless of whether or not Rossi calls himself a political director, there is no evidence that Rossi has the authority to act as a supervisor

The Petitioner contends that union representative Christopher Roell has the authority to direct the work of other employees. The record indicates that Roell is one of three union representatives who work out of the Buffalo office. Roell was hired by the Employer on January 31, 2005, and reports directly to Binaxas. Binaxas testified that since Roell was hired, he has been responsible for negotiating the janitorial contract in Western New York. Wade Outlaw, a former organizer who worked in the Buffalo office, testified that he observed Roell regularly directing Dennis Zgoda, a union representative based in Buffalo, as to his daily work activities. More specifically, Outlaw testified that Roell would tell Zgoda to call someone or contact a particular unit. However, Outlaw's testimony was limited as he could not provide any specific details as to what Roell specifically said to Zgoda regarding his daily work assignments. Outlaw also testified that other union representatives in the Buffalo office, who are already included in the bargaining unit herein, provided the same assistance to Zgoda as Roell did when it came to

⁴ Rector testified that prior to becoming a political director, she was an organizer for a few months. As a political director, Rector earned an annual salary of \$45,000.

his daily work activities, as Zgoda was recently hired on February 14, 2005. Outlaw further testified that he did not report to Roell, but instead continued to report directly to Binaxas. Binaxas testified that he is solely responsible for assigning the work in the Buffalo office.

Finally, the Petitioner contends that union representative Richard Drucker is a supervisor because he has the authority to direct the work of other employees and to hire employees. Drucker was hired by the Employer on November 13, 2001. Drucker works out of the Employer's Albany office, and reports to Mike Lonigro, the Employer's vice-president. Drucker earns an annual salary of \$51,879 and receives a monthly car allowance of \$575.00 per month.

Drucker became a union representative on or about April 11, 2005. Prior to becoming a union representative, Drucker served as a campaign coordinator. As a campaign coordinator, Drucker was responsible for coordinating activities concerning contract negotiations. Binaxas testified that as a campaign coordinator, Drucker also had the responsibility of directing the work of other employees and hiring. For example, Binaxas testified that Drucker independently created assignment plans and submitted them to Lonigro for approval. Once approved, Drucker implemented the assignment plans to employees in Albany. Drucker also had the responsibility to hire employees, and on March 21, 2005, Drucker exercised this authority by hiring Joseph Corra, as an organizer to work in the Albany office. Corra was laid off on April 11, 2005 by Lonigro.

At the hearing, the parties stipulated that, prior to April 11, 2005, Drucker was a supervisor exercising one or more of the criteria listed in Section 2(11) of the Act. However, Binaxas testified that on April 11, 2005, Drucker's job responsibilities changed, as he no longer serves as a campaign coordinator. Binaxas testified that Drucker is now a union representative and is only responsible for servicing and enforcing collective-bargaining agreements, and

performing the same job duties as other union representatives. Binaxas further testified, without contradiction, that Drucker no longer has the authority to direct the work of other employees or to hire employees.

ANALYSIS

Unit Composition

The Petitioner contends that the job classifications of information coordinator, political organizer and political representative should be excluded from the bargaining unit because they do not share a community of interest with other petitioned-for employees. The Employer disagrees and seeks to include these job classifications in the unit found appropriate.

Resolution of unit composition issues begin with an examination of the petitioned-for unit. If it is appropriate, the inquiry ends. See Bartlett Collins Co., 334 NLRB 484 (2001). In determining the threshold issue of appropriateness, the Board is guided by the principle that it need endorse only an appropriate unit, not the most appropriate unit. See Overnite Transportation Co., 322 NLRB 723 (1996); Morand Bros. Beverage Co., 91 NLRB 409, 419 (1950). A union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); Bamberger's Paramus, etc., 151 NLRB 748, 751 (1965); Purity Food Stores, Inc., 160 NLRB 651 (1966). Moreover, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. Capital Bakers, Inc., 168 NLRB 904, 905 (1967).

In determining the appropriateness of a petitioned-for unit, the issue is whether the employees share a community of interest. NLRB v. Action Automotive, Inc., 469 U.S. 490, 494 (1985). Appropriateness depends upon community of interest factors including, but not limited

to, mutuality of wages, hours and working conditions; commonality of supervision; similarity in qualifications, training, skills and job functions; frequency of contact and interchange; and functional integration. See Ore-Ida Foods, 313 NLRB 1016 (1994); Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962). While a union's interest in representing a particular unit is relevant, it is not dispositive. See E.H. Koester Bakery & Co., 136 NLRB 1006 (1962). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See Overnite Transportation Co., 331 NLRB 662 (2000); Bartlett Collins Co., *supra*.

Upon review of the record, for the reasons cited below, I conclude that the job classifications of information coordinator, political organizer and political representative share a substantial community of interest with those job classifications included in the petitioned-for unit and that they must be included in the unit found appropriate herein.

Information Coordinator

The record establishes that Mark Keith, the Employer's only information coordinator, receives an annual salary and a monthly car allowance, consistent with those of other employees in the petitioned-for unit. Keith also receives the same benefits package and reports to the same line of supervisors as other bargaining unit employees who are based in the Syracuse office. For example, Keith reports directly to Binaxas, and ultimately to president Jerry Dennis. The record further establishes that Keith works and interacts with other unit employees on a daily basis. For example, when performing his primary job duties of drafting leaflets, handbills, and other forms of communications, the record establishes that Keith works directly with union representatives, organizers and the project specialist to draft said communications.

The record also establishes that information coordinator Keith spends approximately 10 to 15 percent of his time serving as a union representative, and performing the same job duties as other union representatives included in the petitioned-for bargaining unit. Thus, based on all the record evidence, I conclude that the job classification of information coordinator should be included in the appropriate bargaining unit found herein.

Political Organizer and Political Representative

The record establishes that John Balduzzi, the Employer's only political organizer, and Joseph Rossi, the Employer's only political representative, receive annual salaries similar to those of other employees in the petitioned-for unit. Balduzzi and Rossi report directly to president Jerry Dennis. While other employees in Syracuse report directly to director of organizing Binaxas, all employees ultimately report to president Dennis. Also like other employees, Balduzzi and Rossi accumulate travel expenses, receive a monthly car allowance and receive the same benefit package as other employees in the petitioned-for unit. The record also establishes that Balduzzi and Rossi interact and work with other bargaining unit employees on a daily basis. For example, several witnesses, including two organizers and one campaign coordinator, all three of whom are in the petitioned-for unit, testified that they have regular contact with either Balduzzi and/or Rossi, and work with them directly when they are in need of political assistance.⁵ The record also establishes that Balduzzi and Rossi have regular contact with members, by assisting them with COPE and voter registration, which is similar to member contact maintained by union representatives and organizers. Finally, the record reveals at least one example of interchange between organizers and the political department. For example, former employee Patricia Rector became a political director and performed the same job duties

⁵ The record does not indicate how often political assistance is needed.

as Rossi, only after serving as an organizer for a few months. Thus, based on the record evidence, I conclude that the job classifications of political organizer and political representative should be included in the appropriate bargaining unit found herein.

Upon review of the community of interest factors, I conclude that the similarity in wages, benefits, working conditions, supervision, and job duties, along with daily contact, and functional integration, requires the inclusion of the job classifications of information coordinator, political organizer and political representative in the unit found appropriate herein. Therefore, I will include these job classifications in the unit found appropriate herein.

Supervisory Status

The Petitioner contends that political representative Joseph Rossi, union representative Christopher Roell, and union representative Richard Drucker should be excluded from the bargaining unit because they are supervisors exercising one or more of the criteria listed in Section 2(11) of the Act. The Employer disagrees and seeks to include these three individuals in the unit found appropriate.

Section 2(11) of the Act defines a “supervisor” as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statutory indicia outlined in Section 2(11) are listed in the disjunctive, and only one need exist to confer supervisory status on an individual. See, e.g., Phelps Community Medical Center, 295 NLRB 486, 489 (1989); Ohio River Co., 303 NLRB 696, 713 (1991); Opelika Foundry, 281 NLRB 897, 899 (1986); Groves Truck & Trailer, 281 NLRB 1194, n. 1 (1986). However, mere possession of one of the statutory indicia is not sufficient to confer statutory status unless such

power is exercised with independent judgment and not in a routine or clerical manner. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981).

Section 2(11) of the Act sets forth a three-part test for determining supervisory status. Employees are statutory supervisors if they hold the authority to engage in any of the listed supervisory functions; if their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and their authority is exercised "in the interest of the employer." NLRB v. Kentucky River Community Care, Inc., et al., 121 S.Ct. 1861, 1867, 167 LRRM 2164, 2168 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. See Kentucky River, supra, 121 S.Ct. at 1866, 167 LRRM at 2167-2168; Michigan Masonic Home, 332 NLRB 1409, 1409 (2000). Lack of evidence is construed against the party asserting supervisory status. See Michigan Masonic Home, supra, at 1409. "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, supra, at 490. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. See Sears, Roebuck & Co., 304 NLRB 193 (1991).

There is no contention by any party that any of these three individuals have the authority to transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, and do not effectively recommend such actions.

Joseph Rossi

The Petitioner argues that Rossi has the authority to hire or effectively recommend hiring. The record does not support the Petitioner's assertion. In support of its position, the Petitioner relies on the limited testimony of Hilary Penney and Edward Bradley. Penney testified that she observed Rossi looking at resumés and that he later told her that he was no longer accepting resumés for a vacant job opening. Bradley testified that Rossi had asked him to send resumés to him for the same job opening. However, there is no record evidence that establishes that Rossi has the authority to hire or effectively recommend the hiring of any individual. In fact, the record is not clear for what purpose Rossi had the resumés, or whether he was simply collecting the resumés for an admitted supervisor. Moreover, Penney and Bradley admitted that they did not have any direct knowledge of the Employer's hiring decisions. In the absence of evidence that Rossi exercises the authority to hire employees, or to effectively recommend their hire, and based on all the record evidence, I conclude that Rossi is not a supervisor within Section 2(11) of the Act, and that he should be included in the bargaining unit found appropriate herein.

Christopher Roell

The Petitioner argues that Respondent has the authority to direct the work of other employees. In support of its position, the Petitioner relies on the limited testimony of former employee Wade Outlaw. Outlaw generally testified that he saw Roell regularly directing union representative Dennis Zgoda as to his daily work activities. However, Outlaw provided no specific details as to how Roell directed Zgoda's work activities, or what specific work activities he directed. Outlaw further testified that other union representatives provided the same assistance to Zgoda. Moreover, Binaxas provided un rebutted testimony that he was solely responsible for assigning work in the Buffalo office.

The Board has consistently held that mere inferences or conclusionary statements without detailed, specific evidence of the exercise of independent judgment are insufficient to establish supervisory authority. See Sears, Roebuck & Co., 304 NLRB 193 (1991). Thus, based on the lack of evidence that Roell exercises independent judgment in directing the work of Zgoda and all the record evidence, I conclude that Roell is not a supervisor within Section 2(11) of the Act, and should be included in the bargaining unit found herein.

Richard Drucker

The Petitioner argues that Drucker has the authority to direct the work of other employees and to hire employees or effectively recommend hiring. The parties stipulated that prior to April 11, 2005, Drucker was a supervisor within Section 2(11) of the Act, as he directed the work of other employees and he hired employees. However, Binaxas provided un rebutted testimony that Drucker's job duties changed, as he is now a union representative, and as of April 11, 2005, he no longer had the authority to direct the work of other employees or hire employees. Moreover, the Petitioner provided no evidence regarding Drucker's current job duties. Petitioner acknowledged, at the hearing in its closing statement, that the record contains no direct evidence as to Drucker's job duties post-April 11, 2005.

As noted above, the burden of proving supervisory status lies with the party asserting that such status exists. See Kentucky River, supra, 121 S.Ct. at 1866, 167 LRRM at 2167-2168; Michigan Masonic Home, 332 NLRB 1409, 1409 (2000). Thus, since the Petitioner failed to establish that Drucker currently has the authority to direct the work of other employees or has the authority to hire employees or effectively recommend hiring, I conclude that Drucker is not a supervisor within Section 2(11) of the Act, and should be included in the bargaining unit found appropriate herein.

Accordingly, I find that the Petitioner has not met its burden of establishing that Joseph Rossi, Christopher Roell or Richard Drucker exercise supervisory authority within the meaning of Section 2(11) of the Act. Therefore, I shall include these individuals in the bargaining unit found appropriate herein.

There are approximately 19 employees in the appropriate bargaining unit.⁶

CONCLUSION

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time union representatives, organizers, project specialists, campaign coordinators, political organizers, political representatives, and information coordinators, employed by the Employer at its offices located in the State of New York; excluding, the president, executive vice-president, vice-president, secretary-treasurer, office clerical employees, and all managerial employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before

⁶ The Petitioner has not indicated whether it will proceed to an election in a unit other than the petitioned-for unit. Should the Petitioner not wish to proceed to an election in the broader unit found appropriate herein, it will be permitted, upon request, to withdraw its petition without prejudice.

the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **LOCAL 1104, COMMUNICATIONS WORKERS OF AMERICA.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by SEIU Local 200 United with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before **June 1, 2005**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **June 8, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

DATED at Buffalo, New York this 25th day of May, 2005.

HELEN E. MARSH Regional Director
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